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BEFORE THE ARIZONA CORPORATION COMMISSION

2002 FEB 21 A 9 20

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

NEW

AZ CORP COMMISSION
DOCUMENT CONTROL

In the matter of:

MICHAEL DAVID FROMKIN
33 Center Court, Tennis Villas
Dana Pointe, California 92629,

Respondent.

) DOCKET NO. S-03309A-02-0000
)
) NOTICE OF OPPORTUNITY FOR HEARING
) REGARDING PROPOSED ORDER FOR
) RESTITUTION, FOR ADMINISTRATIVE
) PENALTIES, AND FOR OTHER
) AFFIRMATIVE ACTION
)
)
)

NOTICE: RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondent has engaged in acts, practices and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.*, ("Securities Act").

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution, and the Securities Act.

II.

RESPONDENT

2. MICHAEL DAVID FROMKIN ("FROMKIN") whose last known address is 33 Center Court, Tennis Villas, Dana Pointe, California 92629 was an officer and/or director in the following Arizona corporations: SystemXpertS, Inc., The Fromkin Group, Inc., Collegiatewear, Inc., Western States Telecom, Inc., Western States Capital Services, Inc., Western States Industries, Inc., Cactus Engineering, Inc., and Air Exhibits International. Further, during all

1 relevant times, FROMKIN was conducting business involving the offer and sale of securities within
2 or from the state of Arizona.

3 III.

4 FACTS

5 3. During the period of at least February 9, 1995, through October 1998, FROMKIN
6 offered for sale and sold unregistered securities within or from the state of Arizona in the form of
7 stock issued by companies with whom he associated or formed. The investments were offered
8 through general solicitations verbally by FROMKIN. FROMKIN was not a registered securities
9 dealer in the state of Arizona. The stock was not registered for sale within or from the state of
10 Arizona, nor offered in reliance upon an available exemption from registration, nor pursuant to a
11 notice filing.

12 4. FROMKIN engaged in a course of business that operated as a fraud, by offering and
13 selling unregistered stock in a FROMKIN controlled company, without providing material
14 disclosure to investors. When that company purportedly failed to produce profits, FROMKIN
15 offered to exchange the stock for unregistered stock in a new FROMKIN controlled company. In
16 offering and selling unregistered stock through his several companies, FROMKIN raised at least
17 \$225,000 from at least nine (9) investors.

18 5. In December 1994, two owners of a sole proprietorship called Collegiatewear
19 entered into a business agreement with FROMKIN, in an effort to get an input of cash into the
20 business. The company was in the business of manufacturing and selling clothing items to colleges
21 and universities. FROMKIN assisted the owners in incorporating the company in December 1994,
22 in Arizona. FROMKIN received half ownership of the company in the form of 500 shares of
23 restricted stock. FROMKIN was secretary and treasurer of Collegiatewear, while the original
24 owners became president and vice president. FROMKIN then began offering Collegiatewear stock
25 for sale.

1 6. In January 1995, FROMKIN incorporated The Fromkin Group, Inc. in Arizona.
2 The initial business was to purchase or otherwise acquire businesses. FROMKIN was president,
3 CEO, director and principal shareholder. Suzanne Fromkin, his wife, was secretary, director, and
4 principal shareholder. There were no other incorporators, officers, or directors.

5 7. Also in January 1995, FROMKIN and another individual incorporated
6 SystemXpertS, Inc. in Arizona, for the purpose of selling computer systems from a retail store in
7 Phoenix, Arizona. FROMKIN was secretary and treasurer of the company.

8 8. In February 1995, FROMKIN sold at least 250 shares of unregistered stock in
9 SystemXpertS to at least one investor for \$25,000. FROMKIN told the investor that the investor
10 held a 25% interest in the company. The investor was designated as Vice President of
11 SystemXpertS.

12 9. Also in February 1995, FROMKIN sold at least 250 shares of unregistered stock in
13 Collegiatewear to at least one investor for \$25,000. FROMKIN told the investor that the investor
14 held a 25% interest in the company, and would receive one-half of FROMKIN's purported \$1,000
15 weekly salary as a return on the investment.

16 10. Within a few months, both SystemXpertS and Collegiatewear went out of business.
17 The original owners of Collegiatewear discovered that FROMKIN had not been paying bills, and
18 had not invested any money into the company as promised. Further, he had sold his own restricted
19 stock in violation of their agreement, and had emptied the corporate checking account,
20 withdrawing between \$3600 and \$3800.

21 11. In May 1995, FROMKIN incorporated Western States Telcom, Inc. ("WST") in
22 Arizona. FROMKIN was president, secretary, treasurer, and director of WST. The Fromkin
23 Group, Inc. was the principal shareholder. WST initially intended to engage in long-distance
24 telephone services.

25 12. FROMKIN told the investors who had lost their investments in SystemXpertS and
26 Collegiatewear that he would make up their loss by giving them stock in WST. In May 1995, one

1 investor received 100 shares of WST. The other investor received an "Agreement" from The
2 Fromkin Group to sell the investor 100 shares of WST at \$.05 per share for a total of \$5.00, but
3 never received a stock certificate. WST had not registered its shares for sale within or from
4 Arizona.

5 13. From around May 1995 through approximately December 1995, FROMKIN sold
6 WST stock to at least seven (7) other investors for a total of \$175,000. Some investors received a
7 summary of "the WST project" and cash flow projections. Some investors received financial
8 projections for an 18-month period. FROMKIN told investors that he expected they would make
9 millions. At least one investor received a document stating that the expected return on the
10 investment through February 1996 was 128.3%. Investors were not given a prospectus, nor did
11 they receive any balance sheets, income statements, or other material information about the
12 business history of WST and its officers and directors.

13 14. FROMKIN solicited one investor during a round of golf, saying that WST was
14 selling a 2% share in the company for \$25,000. FROMKIN said that the money would be used to
15 expand the company into New Mexico and Utah during 1996. FROMKIN estimated that a
16 \$25,000 investment would return \$53,500 in 1996, a profit of 114%. FROMKIN said he would
17 return all invested money if he were ever asked to do so.

18 15. FROMKIN guaranteed the investment in WST stock in writing against any loss.
19 FROMKIN wrote to some investors, promising that The Fromkin Group, Inc. pledged to
20 repurchase shares at \$250 per share during the term of ownership of the stock.

21 16. Investors received monthly "dividend" checks in WST for one to four months after
22 investing. The checks were in amounts of \$100 to \$600. The payments then stopped. When
23 investors asked to redeem their shares under the guarantee, FROMKIN failed to pay them back.
24 FROMKIN told some investors that WST was defunct due to the actions of his partner and that
25 FROMKIN was going to sue his partner for fraud. FROMKIN told other shareholders that WST's
26 difficulties resulted from reselling problems, along with the fact that the company had been unable

1 to open additional offices as anticipated. FROMKIN promised all the investors that they would not
2 lose their money, because FROMKIN would put them in another investment.

3 17. In August 1996, FROMKIN incorporated Cactus Engineering, Inc. ("Cactus") in
4 Arizona. FROMKIN was an incorporator and director of Cactus. Cactus was purportedly in the
5 business of "electromechanical distribution and manufacturing." Around November 1996,
6 FROMKIN told some WST investors that he would transfer their lost WST investment to shares in
7 Cactus. Investors received no prospectus, but some investors saw a chart of projections on the
8 company. FROMKIN told some investors that Cactus had projected sales of \$1.8 million dollars
9 for 1997. By June 1997, FROMKIN told investors that Cactus had ceased operations, there was
10 nothing left, and that the money was gone. The stock in Cactus was unregistered.

11 18. In October 1997, FROMKIN incorporated Western States Capital Services, Inc., a
12 purported financial services company, in Arizona. ("WSCS") FROMKIN was the statutory agent,
13 secretary, director, and principal officer of WSCS. FROMKIN offered at least four investors in
14 Cactus the opportunity to exchange shares for WSCS shares. WSCS stock was not registered for
15 sale in Arizona.

16 19. In October 1998, FROMKIN incorporated Air Exhibits International ("AEI") in
17 Arizona. FROMKIN was secretary and treasurer. AEI was purportedly a production company that
18 owned an exhibit entitled "The Spirit of Flight World Tour." The exhibit would detail the history
19 of flight and was to open in San Francisco, California. At least two investors asked for their money
20 back from their stock investments, and FROMKIN offered them stock in Air Exhibits International
21 in exchange. The AEI stock was not registered for sale in Arizona. At least one investor was
22 moved from WST shares to Cactus shares to AEI shares, without any consent on his part.

23 20. By continually forming new corporations, and transferring investor shares to the
24 new entity, without providing a prospectus or other material information, FROMKIN perpetrated
25 the false image that FROMKIN was a successful venture capitalist. In fact, FROMKIN was
26

1 engaged in a pattern of deception about his business dealings. Between 1994 and 1999,
2 FROMKIN was involved in the incorporation of no less than 31 Arizona corporations and L.L.C.'s.

3 21. In January 2001, FROMKIN launched the Capital Venture Partners website. The
4 site, located at www.capitalventurepartners.com advertises as an investment program for
5 individuals and companies looking for venture capital. FROMKIN references his involvement in
6 "over forty companies." FROMKIN omits any reference to his failed attempts in the same industry
7 within Arizona. Further, he fails to disclose his ongoing personal bankruptcy filing, while stating
8 that Capital Venture Partners can be a primary investor in the venture capital marketplace.

9 **IV.**

10 **VIOLATION OF A.R.S. § 44-1841**

11 **(Offer or Sale of Unregistered Securities)**

12 22. From on or about February 1995, to October 1997, RESPONDENT offered or sold
13 securities in the form of stock, within or from Arizona.

14 23. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
15 Securities Act.

16 24. This conduct violates A.R.S. § 44-1841.

17 **V.**

18 **VIOLATION OF A.R.S. § 44-1842**

19 **(Transactions by Unregistered Dealer or Salesman)**

20 25. RESPONDENT offered or sold securities within or from Arizona while not
21 registered as a dealer or salesman pursuant to Article 9 of the Securities Act.

22 26. This conduct violates A.R.S. § 44-1842.

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1 VI.

2 VIOLATION OF A.R.S. § 44-1991

3 (Fraud in Connection with the Offer or Sale of Securities)

4 27. In connection with the offer or sale of securities within or from Arizona,
5 RESPONDENT directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made
6 untrue statements of material fact or omitted to state material facts which were necessary in order to
7 make the statements made not misleading in light of the circumstances under which they were made;
8 or (iii) engaged in transactions, practices or courses of business which operated or would operate as a
9 fraud or deceit upon offerees and investors. RESPONDENT'S conduct includes, but is not limited to,
10 the following:

- 11 a. FROMKIN failed to provide offerees with a prospectus or equivalent offering
12 document containing material information about SystemXpertS, Inc.,
13 Collegiatewear, WST, Cactus Engineering, or Air Exhibits International.
14 Information withheld included, but was not limited to, capitalization, plan of
15 distribution, federal tax aspects, redemptions and risks involved in these
16 endeavors.
- 17 b. FROMKIN failed to disclose information on the background of the officers
18 and key personnel, the directors or principal stockholders of the listed
19 companies, including the business backgrounds and experience of the officers
20 and directors in setting up and operating any of the listed entities.
- 21 c. FROMKIN failed to disclose how investors' funds would actually be used,
22 and in fact, gave conflicting uses to various investors.
- 23 d. FROMKIN failed to disclose the financial condition and business histories of
24 himself and his companies.
- 25
26

- 1 e. FROMKIN failed to provide offerees with information on how the value of
2 WST stock was determined. FROMKIN sold shares to different individuals
3 for varying prices.
- 4 f. FROMKIN failed to tell offerees that some investors had received shares in
5 exchange for stock in another FROMKIN company that was defunct, thereby
6 diluting the value of all of the shares.
- 7 g. FROMKIN represented a projected 128.3% return to investors, when in fact,
8 there was no basis for such a claim.
- 9 h. FROMKIN failed to advise offerees and shareholders that the stock was not
10 registered for sale and that he was not a registered dealer or salesman.

11 28. This conduct violates A.R.S. § 44-1991.

12 **XII.**

13 **REQUESTED RELIEF**

14 The Division requests that the Commission grant the following relief against
15 RESPONDENT:

- 16 1. Order RESPONDENT to permanently cease and desist from violating the Securities
17 Act, pursuant to A.R.S. §44-2032;
- 18 2. Order RESPONDENT to take affirmative action to correct the conditions resulting
19 from his acts, practices or transactions, including a requirement to make restitution pursuant to
20 A.R.S. § 44-2032;
- 21 3. Order RESPONDENT to pay the state of Arizona administrative penalties of up to
22 five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
23 and
- 24 4. Order any other relief that the Commission deems appropriate.

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XIII.


HEARING OPPORTUNITY

RESPONDENT may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. A request must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. RESPONDENT or his attorney must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover sheet must accompany the request. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made, the Commission may, without a hearing, enter an order against each RESPONDENT granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shelly M. Hood, Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-mail shood@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the accommodation.

Dated this 20th day of February 2002.



Mark Sendrow
Director of Securities

N: Enforce/Cases/Fromkin/Pleadings/Notice2

Memorandum

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AZ CORP COMMISSION
DOCUMENT CONTROL

DATE: February 21, 2002
TO: Nancy Cole
Docket Control
FROM: Stan Tadlock
Securities Division
RE: Michael David Fromkin
Docket No. S-03309A-01-0000
Assigned Staff
CC: Mabel Aldridge

This is to notify you that the following individuals have been assigned to the above-mentioned case.

- ☒ Mark Sendrow
- ☐ LeRoy Johnson
- ☐ Matthew Neubert

Kathryn McCormick (Staff Attorney)

Stan Tadlock (Staff Investigator)

Note: The Assistant Attorney General assigned to this matter is: Moirá McCarthy.